

The opinion in support of the decision being entered today
was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY CULVER

Appeal No. 2001-1569
Application No. 09/007,714

ON BRIEF

Before FLEMING, DIXON, and GROSS, **Administrative Patent Judges**.
DIXON, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-6,
20-23, 25 and 26.¹

Claims 18 and 24 were canceled in amendment A (Paper No. 4, filed October 7,
1999) and claims 7-17 and 19 were withdrawn from consideration on page 1 of the
brief.

We REVERSE.

¹ The examiner's **Status of Claims** in the answer is correct, whereas the appellant's **STATUS OF THE CLAIMS** in the brief incorrectly list claim 24 as pending in the appeal rather than canceled.

Appellant's invention relates to an internet telephony system with automated call answering with retrieval by the called party via the internet telephony web site. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A call answering and messaging system for an internet telephony web site, comprising:

an internet telephony server for providing internet telephony functionality through a web site, wherein the web site enables a calling party to initiate and connect a voice call to a called party over the internet;

a data storage system; and

a processor coupled to said data storage system, said processor operative to receive a message from said calling party via the internet telephony web site, and to store said message in said data storage system for retrieval by said called party via the internet telephony web site.

The prior art of record relied upon by the examiner in rejecting the appealed claims is as follows:

Hulen et al. (Hulen)	5,497,373	Mar. 05, 1996
Bowater	EP 0 794 650 (European Patent Application)	Sep. 10, 1997

Claims 1, 2, 5, 6,² 20, 21, 23, 25, and 26³ stand rejected under 35 U.S.C. § 102 as being anticipated by Bowater. Claims 3, 4, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bowater in view of Hulen.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 12, mailed Jan. 30, 2001) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 10, filed Dec. 5, 2000) and reply brief (Paper No. 13, filed Mar. 21, 2001) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we make the determinations which follow.

With respect to independent claims 1 and 20, appellant argues that Bowater does not anticipate claims 1 and 20 either by expressly or inherently teaching the claimed invention as recited. (See brief at page 4.) Appellant argues that Bowater

² We note that the examiner has not recited claim 6 in the statement of the rejection in the answer, but does include the claim in the final rejection which has been incorporated.

³ Additionally, we interpret the examiner's listing of claim 16 to be claim 26 since claim 16 has been withdrawn from consideration.

does not teach a processor operative to receive a message from a calling party via the internet telephony web site. (See brief at page 4.) We agree with appellant. We find that while Bowater does teach the use of a telephony web site to connect a call from a calling party to a called party, the DTMAIL 610 website attached to the Internet would be the location/website which receives the message from the calling party and through which the voicemail message would be retrieved by the called party. From our review of the teachings of Bowater, we find many suggestions and variations of the basic system and functionality, but we find no teaching of “a processor coupled to said data storage system, said processor operative to receive a message from said calling party via the internet telephony web site, and to store said message in said data storage system for retrieval by said called party via the internet telephony web site.” (See brief at page 6.) While the teachings of Bowater may be manipulated to define what the telephony website is and what the limitation “via” can be interpreted as, we do not find that the retrieval would be via the same telephony web site that connects the calling party to the called party. Therefore, we do not find that the examiner has established a ***prima facie*** case of anticipation, and we will not sustain the rejection of independent claims 1 and 20 along with their dependent claims 2, 5, 21, 23, 25, and 26.

Since the examiner has not relied upon the teachings of Hulen to remedy the deficiency noted above with the teachings of Bowater and we find no teaching to remedy the deficiency, we will not sustain the rejection of dependent claims 3, 4 and 22.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2, 5, 6, 20, 21, 23, 25, and 26. under 35 U.S.C. § 102 is reversed, and the decision of the examiner to reject claims 3, 4, and 22 under 35 U.S.C. § 103(a) is reversed.

REVERSED

MICHAEL R. FLEMING)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH L. DIXON)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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)	
ANITA PELLMAN GROSS)	
Administrative Patent Judge)	

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